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9 Specially Appearing for Defendants VENETIAN
CASINO RESORT, LLC; LAS VEGAS SANDS, LLC,
10 and LAS VEGAS SANDS CORP.

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14

15 JONATHAN BROWNING, INC., a California
corporation,

16
17 Plaintiff,

18 v.

19 VENETIAN CASINO RESORT, LLC, a Nevada
limited liability company; LAS VEGAS SANDS,
20 LLC, a Nevada limited liability company; LAS
VEGAS SANDS CORP., a Nevada corporation; and
DOES 1 through 100, inclusive,

21 Defendant.
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Case No.: C 07-3983 JSW

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S OBJECTIONS TO THE
DECLARATION OF MICHELLE A.
HON AND FRANKLIN H. LEVY
SUBMITTED IN SUPPORT
DEFENDANTS' MOTION TO
DISMISS**

Date: November 9, 2007

Time: 9:00 am

Complaint Filed: August 2, 2007

Judge: Jeffrey S. White

Courtroom: 2, 17th floor

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Defendants Venetian Casino Resort LLC, Las Vegas Sands LLC, and Las Vegas Sands Corp. (collectively "Defendants"), by and through its counsel, hereby respond to Plaintiff Jonathan Browning, Inc.'s objections to the declaration of Michelle A. Hon and Franklin H. Levy submitted in support of Defendants' Motion to Dismiss.

I. RESPONSE

A. Declaration of Michelle A. Hon.

Plaintiff objects to the Declaration of Ms. Hon on the ground that the statements in the declaration are irrelevant. FRE 402. Plaintiff's objection is without merit. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. FRE 401.

The statements contained in Ms. Hon's declaration are clearly relevant. Ms. Hon's statements that she performed an electronic search of the Online Catalog maintained by the U.S. Copyright Office and such search revealed no copyright registrations or assignments were issued or recorded for Plaintiff Jonathan Browning for any sconces is directly relevant to the issue of whether Plaintiff has met the jurisdictional prerequisite of 17 U.S.C. § 411(a).

B. Declaration of Franklin H. Levy.

Paragraph	Objection	Response
¶ 10 "It is my understanding that the pertinent records of the Venetian Casino Resort LLC's human resources department indicated that the Venetian Casino Resort LLC does not employ anyone by the name of Aileen Pauco."	Hearsay (FRE 802) and lack of personal knowledge (FRE 602).	As Special Counsel to the Venetian Casino Resort, LLC, Mr. Levy has personal knowledge of the records for the Venetian Casino Resort, LLC. The statement is not hearsay because it falls within the

		exception of FRE 803 (6)-(7) which recognizes a hearsay exception for absence of a business record.
Paragraph	Objection	Response
¶ 11 "The Venetian Casino Resort LLC cannot find any record of requesting a bid from Jonathan Browning, Inc. for wall sconces."	Hearsay (FRE 802) and lack of personal knowledge (FRE 602).	As Special Counsel to the Venetian Casino Resort, LLC, Mr. Levy has personal knowledge of the records for the Venetian Casino Resort, LLC. The statement is not hearsay because it falls within the exception of FRE 803 (6)-(7) which recognizes a hearsay exception for absence of a business record.
Paragraph	Objection	Response
¶ 13 "Based on the allegations and facts in the Complaint, I believe that a large number of potential witnesses on behalf of the Venetian Casino Resort, LLC would be located in the	Speculation and lack of personal knowledge. (FRE 602)	The statement is not speculative as it is based on Mr. Levy's personal knowledge. Evidence proving personal knowledge may consist of the witness' own

1 State of Nevada.”

2 testimony and that knowledge
3 includes inferences, opinions,
4 so long as they are grounded
5 in personal observation and
6 experience. Given Mr. Levy’s
7 position as Special Counsel to
8 the Venetian Casino Resort,
9 LLC, he obviously has
10 personal knowledge and
11 experience concerning
12 potential witnesses on behalf
13 of the Venetian Casino Resort,
14 LLC and their location.

15 Furthermore, Mr. Levy’s own
16 rational observation regarding
17 potential witnesses on behalf
18 of the Venetian Casino Resort,
19 LLC and their location is not a
20 legal conclusion.

21 **Paragraph**

21 **Objection**

21 **Response**

22 ¶ 14 “The evidence supporting
23 the Venetian Casino Resort
24 LLC’s defenses, including its
25 records and employees, is
26 predominately located in
27 Nevada.”

22 Speculative and legal
23 conclusion.

22 The statement is not
23 speculative as it is based on
24 Mr. Levy’s personal
25 knowledge. Evidence proving
26 personal knowledge may
27 consist of the witness’ own
28

1			testimony and that knowledge
2			includes inferences, opinions,
3			so long as they are grounded
4			in personal observation and
5			experience. Given Mr. Levy's
6			position as Special Counsel to
7			the Venetian Casino Resort,
8			LLC, he obviously has
9			personal knowledge and
10			experience concerning the
11			location of the Venetian
12			Casino Resort, LLC's records
13			and witnesses that would be
14			relevant to defending this
15			action.
16			
17			Furthermore, Mr. Levy's own
18			rational observation regarding
19			documents and witnesses is
20			not a legal conclusion.
21	Paragraph	Objection	Response
22	¶ 15 "The burden on the	Speculation and legal	The statement is not
23	Venetian Casino Resort LLC	conclusion.	speculative as it is based on
24	to transport Nevada-based		Mr. Levy's own personal
25	witnesses and documentary		knowledge. Evidence proving
26	evidence to the Northern		personal knowledge may
27	District of California would be		consist of the witness' own
28			

1 substantial, as well as
2 expensive.”

testimony and that knowledge
includes inferences, opinions,
so long as they are grounded
in personal observation and
experience. Given Mr. Levy’s
position as Special Counsel to
the Venetian Casino Resort,
LLC, he obviously has
personal knowledge and
experience concerning the
substantial burden and
expense of defending this
action in North District of
California. Mr. Levy
specifically states that the
substantial burden and
expense would be due to the
fact that Venetian Casino
Resort LLC would have to
transport Nevada-based
witnesses and documentary
evidence to the Northern
District of California.

Mr. Levy’s own rational
observation regarding the
substantial burden and

		expense of this action in North District of California is not a legal conclusion.
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II. CONCLUSION

For all the foregoing reasons, Plaintiff's objections should be overruled.

Dated: October 10, 2007

DUANE MORRIS LLP

By: /s/ Michelle A. Hon
Ray L. Wong
Michelle Hon
Specially Appearing for Defendants VENETIAN
CASINO RESORT LLC; LAS VEGAS SANDS LLC,
and LAS VEGAS SANDS CORP.